

1 Peter N. Larson (State Bar No. 153448)
 2 pnlarson@jonesday.com
 3 Ellinor R. Coder (State Bar No. 258258)
 4 ecoder@jonesday.com
 5 JONES DAY
 6 555 California Street, 26th Floor
 7 San Francisco, CA 94104
 8 Telephone: (415) 626-3939
 9 Facsimile: (415) 875-5700
 10 Paula W. Render (*Admitted Pro Hac Vice*)
 11 prender@jonesday.com
 12 Lawrence C. DiNardo (*Admitted Pro Hac Vice*)
 13 lcdinardo@jonesday.com
 14 JONES DAY
 15 77 West Wacker
 16 Chicago, IL 60601-1692
 17 Telephone: (312) 782-3939
 18 Facsimile: (312) 782-8585

19 Attorneys for Defendants
 20 WAL-MART STORES, INC. AND
 21 WAL-MART.COM USA LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

| | |
|--|---|
| IN RE ONLINE DVD RENTAL ANTITRUST LITIGATION | Master File No. 4:09-md-2029 PJH MDL No. 2029 Hon. Phyllis J. Hamilton |
| This document relates to Case No. 4:11-cv-01928 PJH: SCOTT CALDWELL, on behalf of himself and all others similarly situated, Plaintiff, vs. NETFLIX, INC.; WAL-MART STORES, INC.; and WAL-MART.COM USA LLC, Defendants. | STIPULATION AND [Proposed] ORDER REGARDING CALDWELL CASE MANAGEMENT |

1 WHEREAS on April 20, 2011, Plaintiff Scott Caldwell filed an action on behalf of
 2 himself and all others similarly situated against Netflix, Inc. and the Wal-Mart Defendants (Wal-
 3 Mart Stores, Inc. and Wal-Mart.com USA LLC);

4 WHEREAS Plaintiff Caldwell alleges substantially the same conduct as is alleged in the
 5 MDL proceeding, *In re Online DVD Rental Antitrust Litigation*, master file number 4:09-md-
 6 2029 PJH;

7 WHEREAS the Court found that the Caldwell action and the MDL proceeding are related
 8 in the Court's April 29, 2011 Related Case Order, and the Caldwell action was reassigned to the
 9 Court (MDL Doc. No. 377);

10 WHEREAS the Caldwell action has not been consolidated with the MDL proceeding
 11 through the Judicial Panel on Multidistrict Litigation;

12 WHEREAS the Caldwell action was filed by a law firm and a plaintiff who had no
 13 previous role in the MDL litigation, and Plaintiffs represent that the Caldwell action was only
 14 filed in order to facilitate the negotiation of a settlement agreement between Plaintiffs and the
 15 Wal-Mart Defendants in the MDL proceeding in light of the conflict issues that were raised in
 16 connection with the motion for approval of the prior Wal-Mart settlement;

17 WHEREAS Plaintiff Caldwell's claims are the same as those alleged in the consolidated
 18 complaint in the MDL proceeding, and the Caldwell complaint alleges that Mr. Caldwell is a
 19 member of the certified Netflix class and he does not intend to opt out; and

20 WHEREAS Plaintiff Caldwell is willing to consolidate his claims with those in the MDL
 21 proceeding as to both the Wal-Mart Defendants and Netflix;

22 The undersigned do hereby agree and stipulate that upon the entry of this [Proposed]
 23 Order:

24 1. Stipulation and Pretrial Order No. 3 Re Certain Procedural Guidelines To Be
 25 Followed in MDL No. 2029, as modified by the Court (MDL Doc. No. 41), shall apply to the
 26 Caldwell action.

27 2. No responsive pleading, other than those which have been filed in the MDL
 28 proceeding, is required from any Defendant in the Caldwell action.

3. Plaintiff Caldwell agrees to be subject to the calendar in the MDL litigation, including the dates now passed for discovery and filing dispositive motions.

4. Plaintiff Caldwell agrees to have his claims against the Wal-Mart Defendants made subject to the stay of proceedings and bifurcation order entered by the Court on August 30, 2010. (MDL Doc. No. 203).

5. The August 4, 2011 Case Management Conference in the Caldwell action shall be vacated.

Dated: May 26, 2011

Respectfully submitted,

By: /s/ Paula W. Render
Paula W. Render (*Pro Hac Vice*)

Counsel for Defendants
WAL-MART STORES, INC. AND
WAL-MART.COM USA LLC

By: /s/ Craig C. Corbitt (with permission)
Craig C. Corbitt

Counsel for Plaintiff
SCOTT CALDWELL

By: /s/ Dylan J. Liddiard (with permission)
Dylan J. Liddiard

Counsel for Defendant
NETFLIX, INC.

IT IS SO ORDERED.

Dated: 5/31/11

By: _____
Hon. Phyllis J. Hamilton
United States District Judge

